

ORDINANCE NO. 2010.47

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF TEMPE, ARIZONA, AMENDING CHAPTER 16 OF THE
TEMPE CITY CODE, RELATING TO LICENSE,
PRIVILEGE AND EXCISE TAXES BY AMENDING
SECTION 16-595.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA,
as follows:

SECTION I. That Section 16-595 of the Tempe City Code is hereby amended to read as follows:

Sec. 16-595. Collection of taxes when there is succession in and/or cessation of business.

(a) In addition to any remedy provided elsewhere in the City Code that may apply, the Tax Collector may apply the provisions of subsections (b) through (d) below concerning the collection of taxes when there is succession in and/or cessation of business.

(b) The taxes imposed by this Chapter are a lien on the property of any person subject to this Chapter who sells his business or stock of goods, or quits his business, if the person fails to make a final return and payment of the tax within fifteen (15) days after selling or quitting his business.

(c) Any person who purchases, or who acquires by foreclosure, by sale under trust deed or warranty deed in lieu of foreclosure, or by any other method, improved real property or a portion of improved real property for which the Privilege Tax imposed by this Chapter has not been paid shall be responsible for payment of such tax as a speculative builder or owner-builder, as provided in Sections 16-416 and 16-417.

- (1) ANY PERSON WHO IS A CREDITOR OR AN AFFILIATE OF CREDITOR, WHO ACQUIRES IMPROVED REAL PROPERTY DIRECTLY OR INDIRECTLY FROM THE CREDITOR'S DEBTOR BY ANY MEANS SET FORTH IN THIS SUBSECTION, SHALL PAY THE TAX BASED ON THE AMOUNT RECEIVED BY THE CREDITOR OR ITS AFFILIATE IN A SUBSEQUENT SALE OF SUCH IMPROVED REAL PROPERTY TO A PARTY UNRELATED TO THE CREDITOR, REGARDLESS OF WHEN SUCH SUBSEQUENT SALE TAKES PLACE. SUCH TAX SHALL BE DUE IN THE MONTH FOLLOWING THE MONTH IN WHICH THE SALE OF THE IMPROVED REAL PROPERTY BY THE CREDITOR OR ITS AFFILIATE OCCURS. NOTWITHSTANDING THE FOREGOING, IF THE REAL PROPERTY MEETS THE DEFINITION OF PARTIALLY IMPROVED RESIDENTIAL REAL PROPERTY IN SECTION 16-416(A)(4)

AND ALL OF THE REQUIREMENTS OF SECTION 16-416(B)(4) ARE MET BY THE PARTIES TO THE SUBSEQUENT SALE TRANSACTION, THEN THE TAX SHALL NOT APPLY TO THE SUBSEQUENT SALE.

- (2) IN THE EVENT A CREDITOR OR ITS AFFILIATE USES THE ACQUIRED IMPROVED REAL PROPERTY FOR ANY BUSINESS PURPOSE, OTHER THAN OPERATING THE PROPERTY IN THE MANNER IN WHICH IT WAS OPERATED, OR WAS INTENDED TO BE OPERATED, BEFORE THE ACQUISITION OR IN ANY OTHER MANNER UNRELATED TO SELLING THE PROPERTY, THE TAX SHALL BE DUE. THE GROSS INCOME UPON WHICH THE TAX SHALL BE DETERMINED PURSUANT TO SECTIONS 16-416 AND 16-417 SHALL BE THE FAIR MARKET VALUE OF THE IMPROVED REAL PROPERTY AS OF THE DATE OF ACQUISITION. THE TAX SHALL BE DUE IN THE MONTH FOLLOWING THE MONTH IN WHICH SUCH FIRST BUSINESS USE OCCURS. WHEN APPLICABLE, THE CREDIT BID SHALL BE DEEMED TO BE THE FAIR MARKET VALUE OF THE PROPERTY AS OF THE DATE OF ACQUISITION.
- (3) ONCE THE SUBSEQUENT SALE BY THE CREDITOR OR ITS AFFILIATE HAS OCCURRED AND THE CREDITOR OR ITS AFFILIATE HAS PAID THE TAX DUE FROM IT PURSUANT TO THIS SUBSECTION, NEITHER THE CREDITOR NOR ITS AFFILIATE, NOR ANY FUTURE OWNER, SHALL BE LIABLE FOR ANY OUTSTANDING TAX, PENALTIES OR INTEREST THAT MAY CONTINUE TO BE DUE FROM THE DEBTOR BASED ON THE TRANSFER FROM THE DEBTOR TO THE CREDITOR OR ITS AFFILIATE.
- (4) IF THE TAX LIABILITY IMPOSED BY EITHER SECTION 16-416 OR SECTION 16-417 ON THE TRANSFER OF THE IMPROVED REAL PROPERTY TO THE CREDITOR OR ITS AFFILIATE, OR ANY PART THEREOF, IS PAID TO THE TAX COLLECTOR BY THE DEBTOR SUBSEQUENT TO PAYMENT OF THE TAX BY THE CREDITOR OR ITS AFFILIATE, THE AMOUNT SO PAID MAY CONSTITUTE A CREDIT, AS EQUITABLY DETERMINED BY THE TAX COLLECTOR IN GOOD FAITH, AGAINST THE TAX IMPOSED ON THE CREDITOR OR ITS AFFILIATE BY EITHER PARAGRAPH 1 OR PARAGRAPH 2 OF THIS SUBSECTION.
- (5) NOTWITHSTANDING ANYTHING IN THIS CHAPTER TO THE CONTRARY, IF A CREDITOR OR ITS AFFILIATE IS SUBJECT TO TAX AS DESCRIBED IN PARAGRAPH 1 OR PARAGRAPH 2 OF THIS SUBSECTION AND SUCH CREDITOR OR AFFILIATE HAS NOT PREVIOUSLY BEEN REQUIRED TO BE LICENSED, SUCH CREDITOR OR AFFILIATE SHALL BECOME LICENSED NO LATER THAN THE DATE ON WHICH THE TAX IS DUE.

(d) A person's successors or assignees shall withhold from the purchase money an amount sufficient to cover the taxes required to be paid, and interest or penalties due and payable, until the former owner produces a receipt from the Tax Collector showing that all City tax has been paid or a certificate stating that no amount is due as then shown by the records of the Tax Collector. The Tax Collector shall respond to a request from the seller for a certificate within fifteen (15) days by either providing the certificate or a written notice stating why the certificate cannot be issued.

- (1) If a subsequent audit shows a deficiency arising before the sale of the business, the deficiency is an obligation of the seller and does not constitute a liability against a buyer who has received a certificate from the Tax Collector.
- (2) If the purchaser of a business or stock of goods fails to obtain a certificate as provided by this Section, he is personally liable for payment of the amount of taxes required to be paid by the former owner on account of the business so purchased, with interest and penalties accrued by the former owner or assignees.

SECTION II. The provisions of this Ordinance shall be effective from and after May 1, 2010.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this _____ day of _____, 2010.

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney